

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____))	
TRANS-SPEC TRUCK SERVICE, INC.)	CIVIL ACTION NO. 04-11836-RCL
d/b/a TRUCK SERVICE,)	
Plaintiff)	
)	
vs.)	
)	
CATERPILLAR INC.)	
Defendant)	
_____))	

**OPPOSITION TO CATERPILLAR INC.'S MOTION FOR RECONSIDERATION [SIC]
OF MAGISTRATE JUDGE'S ORDER ON CATERPILLAR INC.'S MOTION FOR
SANCTIONS AND RULE 7.1 CERTIFICATE**

Plaintiff Trans-Spec Truck Service, Inc., d/b/a Truck Service ("Trans-Spec"), hereby opposes Defendant Caterpillar Inc.'s ("Caterpillar") *Motion For Reconsideration [Sic] Of Magistrate Judge's Order On Caterpillar Inc.'s Motion For Sanctions And Rule 7.1 Certificate* ("Motion for Reconsideration") and moves the Court to award it costs for having to oppose it.

On June 1, 2006, Magistrate Judge Joyce London Alexander entered the following Electronic Order ("June 1, 2006 Order") to memorialize her bench ruling of May 31, 2006¹:

It is hereby ordered that the depositions noticed by Trans-Spec be taken on or before June 30, 2006, notwithstanding the objection of Caterpillar's counsel, who it must be noted, requested sanctions for preparing for the depositions. The documents requested by Trans-Spec, must be produced by June 14, 2006.

On June 9, 2006, Magistrate Judge Joyce London Alexander issued a more detailed Memorandum and Order ("June 9, 2006 Order") to "detail[] the bases for the Court's ruling." (Order at p. 2).

Although Caterpillar's Motion for Reconsideration is completely without merit, Trans-Spec does not intend to overpaper this matter as Caterpillar has done. Trans-Spec incorporates

¹ It is puzzling why Caterpillar did not address the subject of this present Motion for Reconsideration in its *Request For Reconsideration [Sic] By District Court Judge Of Magistrate Judge's Ruling On Plaintiff's Emergency Motion To Extend The Discovery Deadline And To Require Production Of Documents*, disfavored by this Court on June 15, 2006. The Court should hold this present Motion for Reconsideration barred as untimely.

by reference its *Emergency Motion Of The Plaintiff To Compel Production Of Documents And To Extend Expert Discovery Period*, granted by the Magistrate Judge pursuant to the June 1, 2006 Order and attached hereto as Exhibit A, its *Opposition Of The Plaintiff To Caterpillar Inc.'s Motion For Sanctions*, attached as Exhibit B and favored by the Magistrate Judge pursuant to the June 1, 2006 Order, its *Opposition To Caterpillar Inc.'s Motion To Stay Magistrate's Order Requiring The Production Of Expert Documents And The Taking Of Expert Depositions, Caterpillar Inc.'s Request For Reconsideration [Sic] By District Court Judge Of Magistrate Judge's Ruling On Plaintiff's Emergency Motion To Extend The Discovery Deadline And To Require Production Of Documents, And Supporting Memoranda*, attached as Exhibit C and favored by the Court pursuant to its June 15, 2006 Order, and invites the Court to review pages 7-14 and 29-37 of the transcript of the March 31, 2006 hearing on both matters ("Transcript"), attached as Exhibit D.

Moreover, as Caterpillar has produced the documents requested and been informed that Trans-Spec does not intend to take expert depositions at this time, Trans-Spec is at a loss as to why Caterpillar is filing this Motion for Reconsideration and wasting its money, Trans-Spec's money, and this Court's time.²

² Trans-Spec reserves the right to seek leave of Court to take expert depositions and seek sanctions regarding the documents produced by Caterpillar pursuant to the June 1, 2006 Order. After informing the Court at oral argument on May 31, 2006 that it already produced "many of them already," see Transcript, 34.1-2, at Ex. D, Caterpillar produced to Trans-Spec on June 13 and 14, 2006, **eight boxes** of documents and **fourteen cd-roms and five dvds** containing the equivalent of hundreds of thousands of pages of information, prohibiting Trans-Spec from making a meaningful analysis and adequately preparing for any depositions within the time allowed by the June 1, 2006 Order. Moreover, Caterpillar produced for the first time documents that it should have produced pursuant to duly served document requests (for just a few of many examples, see Exs. E, F, and G). Caterpillar's refusal to produce documents of the type provided at Exs. E, F, and G has prejudiced Trans-Spec, prevented Trans-Spec from fully deposing Caterpillar at its Fed. R. Civ. P. 30(b)(6) deposition, and hindered Trans-Spec's overall prosecution of this matter. In footnote 3, page 5 of *Caterpillar Inc.'s Opposition to Plaintiff's Objection to the Magistrate Judge's Order Denying Motion to Amend the Complaint*, Caterpillar argues that discovery procedures available to Trans-Spec would have permitted it to uncover information it sought. Caterpillar declines to add that, in order for the discovery procedures set forth in the Federal Rules to work, the party from which discovery is sought must make honest and full productions, and not improperly withhold information sought. As shown by the late production of Exs. E, F, G, as well as other documents and information, Caterpillar has routinely withheld many documents that should have been produced over a year ago pursuant to duly served discovery requests. Caterpillar's action is worthy of sanction, making its filing of this Motion for Reconsideration all the more puzzling.

WHEREFORE, Trans-Spec respectfully requests that this Court deny Caterpillar's Motion for Reconsideration for the foregoing reasons and award Trans-Spec its costs in having to prepare this opposition to such a frivolous and bad faith motion.

Respectfully submitted,
TRANS-SPEC TRUCK SERVICE, INC.
d/b/a TRUCK SERVICE
By its Attorneys,

/s/ Christian G. Samito
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Date: June 22, 2006

REQUEST FOR ORAL ARGUMENT

If the Court deems it necessary, Trans-Spec requests oral argument on its *OPPOSITION TO CATERPILLAR INC.'S MOTION FOR RECONSIDERATION [SIC] OF MAGISTRATE JUDGE'S ORDER ON CATERPILLAR INC.'S MOTION FOR SANCTIONS AND RULE 7.1 CERTIFICATE*.

CERTIFICATE OF SERVICE

I, Christian G. Samito, hereby certify that on this 22nd day of June 2006, I served a copy of the foregoing by causing a copy to be transmitted electronically to:

John A. K. Grunert, Esq.
Campbell Campbell Edwards & Conroy
One Constitution Plaza, 3rd Floor
Boston, MA 02129

/s/ Christian G. Samito
Christian G. Samito, Esq.

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